IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
NOTICE OF MOTION NO.4340 OF 2006
IN
APPEAL NO.555 OF 2005
IN
SUIT NO.2812 OF 2001

Jayesh H. Pandya
of Mumbai, Indian Inhabitant,
a partner of M/s. Hetali
Construction Company a
registered partnership firm
residing at 601, Dhwani
Dhruv, 67, Presidency CHS
Ltd., N.S. Road No.6,
Juhu Scheme, Vile Parle
(West), Mumbai-400 056. .... Appellant

- Versus -

1. Maheshkumar Banwarilal
   Gupta of Mumbai, Indian
   Inhabitant, residing at
   Gurukripa, Dixit Road,
   Vile Parle (East),
   Mumbai-400 057.

2. Ashok Banwarilal
   Gupta of Mumbai, Indian
   Inhabitant, residing at
   Gurukripa, Dixit Road,
   Vile Parle (East),
   Mumbai-400 057.

3. Urmila Gupta wife of Shiv
   Gupta, the Defendant No.10
   abovenamed carrying on
   business in the name and
   style of Amber Industries,
   residing at Guru Kripa
   Dixit Road, Vile Parle (E),
   Mumbai-400 057.

4. Prime Focus Limited
   Anand Kunj, North Avenue
   Road, Linking Road,
   Santacruz (West),
   Mumbai-400 054. .... Respondents

Shri J.P. Sen i/b Ms Jacinta D’Silva for

the Applicant in support of the Notice of Motion.

Shri Sanjay Jain i/b Ms Jyoti Chavan for the Respondent.

Shri Ashok B. Gupta, the Respondent present in Court.

Sarvasri D.V. Deokar, 1st Asst., and C.R. Bhogaonkar, 2nd Asst. to Court Receiver, present in Court.

CORAM: R.M.S. KHANDEPARKAR &
Dr. D.Y. CHANDRACHUD, JJ.

DATED: JANUARY 12, 2007

P.C:

1. On oral motion made by the learned Advocate for the appellant/original plaintiff, the respondent Nos.1 to 3, 6 to 16 and 18 to 24 are allowed to be deleted from the notice of motion. The amendment to be carried out forthwith. The respondent Nos.4, 5, 17 and 25 are to be arrayed in the notice of motion as the respondent Nos.1, 2, 3 and 4.

2. Heard. This is a notice of motion taken out by the appellant/plaintiff seeking direction to the Court Receiver to take physical possession of the Flat Nos.101 and 102, as according to the appellant/plaintiff, the party in possession of the said Flats is trying to induct third party in the said Flats in contravention of the order passed by this Court on 19-9-2006 in Notice of Motion No.1900 of 2005. The contention on behalf of the

respondent Nos.3 and 4 is that the premises in question had always been in possession of the respondent No.3 and they were merely allowed to be used for business by the respondent No.4. It is their further contention that the premises had always been in possession of the respondent No.3 in her capacity as the Proprietress of Amber Business Centre and the said business is of the nature of business centre wherein Prime Focus Limited was allowed to use the premises for its business and consequently on they ceasing to make use of the business centre, the respondent No.3 would continue to run the said business while allowing the desirous persons to make use of the different compartments erected in the said premises for their respective business or commercial activities.

3. Upon hearing the learned Advocates for the parties and perusal of the records, it is apparent that under the order dated 19-9-2006 this Court had directed that save and except the Flat Nos.401 and 402, the parties in possession of the respective Flats shall continue to remain in possession without payment of royalty and security to the Court Receiver with further clarification that if any of the occupants of such Flats vacate the Flat, the information in that regard should be furnished to the Court Receiver and permission of the Court should be obtained before inducting any third

person by the concerned party in such Flat.

4. The said order obviously discloses that except Flat Nos.401 and 402, the parties to the proceedings who are in possession of the respective Flats were allowed to continue to remain in possession of such Flats with the rider that in case any other person is in factual occupation of such Flats and if such occupant vacates the Flat or Flats, then the information in that regard should be furnished to the Court Receiver and no third party should be inducted in such Flats without prior permission of the Court.

5. The records placed before us undisputedly disclose that the respondent No.3 was in possession of the Flat Nos.101 and 102 i.e., the suit premises at the time when the order dated 19-9-2006 was passed while the respondent No.4 was in occupation thereof consequent to the permission granted in that regard by the respondent No.3. Under the letter dated 27-11-2006 the respondent No.4 had clearly intimated the Court Receiver that the keys of the suit premises would be handed over to the respondent No.3 in the second week of December, 2006 in view of the fact that the respondent No.4 proposes to vacate the said Flats in the second week of December, 2006. Obviously, the intimation was in terms of the Clause 3(ii) of the order dated 19-9-2006.

6. Though it was sought to be contended on behalf of the appellant/plaintiff that in view of the fact that Prime Focus Limited was in actual possession of the premises, they could not have handed over the possession of the premises to the respondent No.3 considering the fact that the order of 19-9-2006 clearly makes differentiation between the parties to the proceedings who are in possession of the premises and those who are in actual possession consequent to the induction therein by the parties to the proceedings and further that the fact that Prime Focus Limited was inducted in the suit premises by the respondent No.3 being not in dispute, the contention of the appellant/plaintiff that there has been an attempt to violate the order of 19-9-2006 by Prime Focus Limited by delivering the physical possession of the premises to the respondent No.3 cannot be accepted. In fact, the acts on the part of Prime Focus Limited i.e., the respondent No.4 are in consonance with the directions issued by this Court in the order dated 19-9-2006. Needless to say that consequent to delivery of possession of the Flat Nos.101 and 102 to the respondent No.3 by the respondent No.4, in case the respondent No.3 intends to induct any third party therein or allow any third party to occupy the said Flats or any part thereof, the respondent No.3 will have to take prior permission of this Court in

accordance with the order dated 19-9-2006.

7. In view of what is stated hereinabove, therefore, nothing survives in this notice of motion and the same needs to be discharged with the observations made as above. The notice of motion is accordingly discharged.

(Dr.D.Y.Chandrachud, J.) (R.M.S.Khandeparkar, J.)

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